

THE OWNER:

THE COVENANT HOLDER: The Town of Brookline, a municipal corporation, located in Norfolk County with a mailing address of Town of Brookline, Planning Department, 333 Washington Street, Brookline, MA 02445 and acting by and through its Department of Planning and Community Development by its Planning Director.

WHEREAS

The Town of Brookline, acting under Section 4.40 of the Town of Brookline Zoning By-Law and through its Zoning Board of Appeals, and pursuant to the public and charitable purpose of creating, preserving and promoting permanently affordable housing in Brookline, has granted a special permit to build residential units, in accordance with Board of Appeals Decision No. _____ issued by the Board of Appeals of the Town of Brookline on _____, _____, and recorded in Book _____, Page _____ in the Norfolk County Registry of Deeds, and in partial compliance with its obligation to the Town of Brookline in relation to that special permit to provide Affordable Housing, the grantee of the special permit is selling the Property at below market price to an income qualified Household to use as its Principal Residence. The Owner acknowledges that the Property is to be used as Affordable Housing. The Owner further acknowledges that this Covenant is included within the authority of the Covenant Holder, acting by and through its Zoning Board of Appeals in the issuance of the special permit. The Owner and his/her Household must be of Low-Moderate Income at the time of purchase of the Property.

For valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Owner identified above, for themselves and their heirs, successors and assigns (including all persons who subsequently own the Property or any interest therein while this Covenant is in effect), hereby covenant and agree that the provisions and restrictions contained herein exist to further the mutual purposes and goals of the Covenant Holder to create and preserve affordable housing for Low-Moderate Income Households; that the terms and conditions of this Covenant have been freely accepted; and that the Property shall be subject to the restrictions for the benefit of the Covenant Holder, its successors, assigns, agents and designees, with the intent that these restrictions created by this Covenant shall be of the maximum duration permitted by law.

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covenants and/or the right to purchase under this or similar covenants, have been transferred. A general delegation of authority by the Town of Brookline to another entity or person as the Covenant Holder shall transfer those rights, powers and obligations assigned to the Covenant Holder in this Covenant. Transfer of any specific rights, powers and obligations assigned to the Covenant Holder, such as the right to purchase the Property, shall be effective only to the extent such rights, powers and obligations are specifically enumerated in the delegation of authority.

- g. "Fair Market Value", unless otherwise stated, means fair market value, as of the day of the event in question (for example, purchase, foreclosure or termination of this Covenant), taking into account the restrictions on ownership and occupancy imposed by this Covenant as if such restriction were perpetual.
- h. "Household" means all persons who reside or will reside together and with the Owner at the Property.
- i. "Income" means the anticipated total income from all sources received by all current members of the Household aged 18 years or older, including income derived from assets. Income shall be determined in accordance with federal regulations at 24 CFR 813.106 or successor regulations thereto.
- j. "Low-Moderate Income" means Household income not exceeding eighty percent (80%) of the Area Median Income for the Boston area, adjusted for family size.
- k. "Owner" means each legal and equitable Owner of all or any portion of the Property during the term of this Covenant, including the Owner identified above, and any subsequent Owner by sale, conveyance or other transfer of any legal or beneficial interest in the Property. For purposes of complying with the occupancy requirements of Section 2, Owner includes only (1) persons acquiring their interest in the Property by purchase who at the time of their purchase were members of a Household of Low-Moderate Income intending to occupy the Property as their Principal Residence; and (2) the surviving spouse, or partner, if currently registered under the Town's Domestic Partners By-Law, inheriting the Property from such an Owner, (3) the surviving minor(s) inheriting the Property from such Owner; and (4) if income qualified, an adult child or adult children inheriting the Property from such Owner, all of whom currently occupy or, in the case of adult children, intend to occupy the Property as their Principal Residence. Without limiting the foregoing, "Owner" does not include, for the purpose of complying with the occupancy requirements of Section 2, any heir, successor or other transferee of a previous Owner whose ownership interest in the Property was not obtained for consideration, other than as above. Unless the context otherwise requires, "Owner" shall mean the Owner at the time in question. "Owner" and "Owners" are used interchangeably.
- l. "Planning Director" means the Director of the Department of Planning and Community Development, or of any future successor department.
- m. "Principal Residence": The residence at which the Owner lives, together with the members of the Owner's household, for the majority of the year, and which the Owner lists as a legal residence for purposes of paying taxes, registering automobiles and voting.

2. Property Shall Be Affordable Housing and Owner's Principal Residence.

a. Affordable Housing.

Each Owner covenants and agrees that the Property shall be Affordable Housing throughout the Term of this Covenant

b. Principal Residence.

Each Owner agrees that, except as otherwise expressly permitted in this Covenant, the Property shall be used only as the Principal Residence for members of the Household of which the Owner is a member. Each Owner agrees not to lease the Property or any part of it without the prior written consent of the Covenant Holder, which consent need not be given if, in the Covenant Holder's judgment, the occupancy or use would not further the purposes of this Covenant to promote Affordable Housing in Brookline.

c. Changes in Household's Circumstances.

It is not a violation of this Covenant if the Household of which the Owner is a member ceases to be of Low-Moderate Income during the Owner's ownership of the Property, provided the Owner's Household continues to occupy the Property as its Principal Residence as long as the Owner owns it.

d. Condition of Property.

Each Owner covenants to maintain the Property in good order, repair and condition, normal wear and tear excluded, and in compliance with all laws, regulations, ordinances, codes, by-laws of the condominium association, orders or other law, now existing or hereafter enacted, regarding the habitability of the Property as housing.

e. Sale Restricted.

In all events the Property can not be sold or otherwise transferred, while this Covenant is in effect, except to members of a Household which at the time of acquisition of their interest in the Property is a Household of Low-Moderate Income for occupancy as the Household's Principal Residence, for a price not in excess of the Maximum Sales Price, as described in Section 3d.

3. The Covenant Holder's Right to Purchase the Property

a. Purchase Rights

To maintain the Property as Affordable Housing throughout the term of this Covenant, the Covenant Holder shall have, and each Owner hereby grants the Covenant Holder (or its designated purchaser) the right (but without obligation) to purchase the Property in any of the following circumstances (the "Purchase Rights"):

- (i) The Owner has given the Covenant Holder Notice of Intent to Sell as required in Section 4; or
- (ii) Any legal or beneficial interest in the Property is conveyed without both Notice of Intent to Sell and Second Notice of Intent to Sell having been given as required in Section 4, unless the Covenant Holder has waived the Purchase Rights in writing, which waiver shall be provided in recordable form; or
- (iii) The Owner is four months or more in arrears on payments related to any mortgage or security interest in the Property held by a lender, and/or a lender holding a security interest has filed a notice of intent to foreclose; or
- (iv) The Covenant Holder has notice of a pending foreclosure against the Property or of commencement of a civil action or equivalent proceeding for unpaid condominium common expenses; or
- (v) The Covenant Holder has notice that the Property is being taken for unpaid taxes; or
- (vi) The Property is no longer the Principal Residence of the Owner whose occupancy fulfills the requirements of Section 2, or the Property is being used in any other manner which does not comply with this Covenant; or
- (vii) The Owner made material misrepresentations in applying to buy the Property; or
- (viii) The Owner has failed to observe and perform the covenants of this Covenant, has received written notice identifying the violations and has failed to cure them.

The Covenant Holder shall be obligated to give the Owner notice and an opportunity to cure only for events under subsections (vi), (vii) or (viii); and for those events, the Owner shall have a reasonable time to cure which shall not exceed six months. In all cases other than sale or other transfer of the Property under subsection (i), the right of the Covenant Holder (or its designated purchaser) to buy the Property shall continue only while the event giving rise to exercise of the Purchase Rights continues unremedied.

b. Duration of Purchase Rights

The Purchase Rights may be exercised throughout the term of this Covenant.

c. Purchase Price

The purchase price of the Property under the Purchase Rights shall be one of the following:

- (i) if the Owner proposes to sell or otherwise voluntarily transfer the Property,
 - (A) the amount for which the Owner proposes to sell or transfer the Property,
 - or
 - (B) the Maximum Sales Price determined as stated below, if less;
 - or
- (ii) in all other cases, the Maximum Sales Price determined as stated below.

d. Maximum Sales Price

- (i) Definition

Most generally, the Maximum Sales Price shall be the price which was paid by the Owner at the time of purchase of the Property, adjusted by changes to Area Median Income between the date of the Owner's purchase and the Owner's sale of the Property, plus the Owner's contribution to the then existing condominium capital replacement reserves. The Maximum Sales Price shall include the aggregate of all money, property and services of every kind given or paid by the buyer to or for the benefit of the Owner in connection with the transfer of the Property, including any consideration paid for any other real property or personal property conveyed by the Owner to the buyer.

The Maximum Sales Price shall be calculated as follows:

- (A) the consideration for the Property as specified in the Deed to the Owner, multiplied by a fraction in which the numerator is the Area Median Income for a family of four persons on the date of sale, and the denominator is the Area Median Income for a family of four persons on the date specified on the Owner's Deed (which is \$ /), plus
- (B) the Owner's share of amount contained in the condominium's segregated capital replacement reserve account as of the date of the Owner's Notice of Intent to Sell.

(ii) **Determination**

The Maximum Sales Price shall be calculated by the Covenant Holder within 10 business days after receipt of any Notice of Intent to Sell and all required documentation. The Covenant Holder shall base such calculations on documentation provided by the Owner with regard to the Owner's purchase price, and information provided by the Owner documenting the Condominium's replacement reserve account as of the date of the Owner's Notice of Intent to Sell.

Upon written application by the Owner and upon submission of such evidence as the Covenant Holder may require, the Covenant Holder shall furnish a certificate in recordable form stating the Maximum Resale Price. Such certificate shall be valid for not less than six months, unless otherwise agreed to by the parties.

e. **Exercise of Purchase Rights**

To exercise the Purchase Rights, the Covenant Holder shall give written notice to the Owner in the manner described in Section 7. If the Covenant Holder (or its designated purchaser) is exercising the Purchase Rights pursuant to Subsection 3.a.(i) above, the Covenant Holder shall give its notice of exercise, if at all, within thirty (30) calendar days of the Owner's Notice of Intent to Sell. The Covenant Holder may give notice exercising the Purchase Rights in all other circumstances until the event giving rise to the Purchase Rights has ceased to exist. In all cases, the Covenant Holder shall exercise the Purchase Rights by notice to the Owner which shall state the approximate purchase price required by this Covenant, and a closing date not more than ninety (90) days from the date of the Owner's Notice of Intent to Sell. The closing shall be held on the date specified and unless the Covenant Holder's notice specifies a place for closing in Brookline, shall be at the Norfolk Registry of Deeds at Dedham, Massachusetts at 2:00 P.M.

f. **Closing Procedure**

The Property is to be conveyed by a good and sufficient quitclaim deed running to the Covenant Holder (or its designated purchaser), conveying a good and clear record and marketable title free from encumbrances except (i) such taxes for the then current year as are not due and payable on the date of the delivery of the deed, (ii) such matters of record (other than mortgages) to which this Covenant was intended to be subordinate at the time of its recording, and (iii) such other matters of record (other than mortgages) to which the Covenant Holder (or its designated purchaser) gave its express written consent. The Owner shall pay all condominium common expenses, assessments and other fees then due and payable and shall deliver a certificate under General Laws, Chapter 183A, Section 6(d) so stating. The Property shall be delivered in the same condition as it was at the time of the Covenant Holder's exercise of the Purchase Rights (but always in at least the condition required under Section 2. of this Covenant) and shall be free of all tenants and occupants. The Covenant Holder (or its designated purchaser) may inspect the Property prior to closing to determine whether its condition complies with this paragraph. Common expenses, fuel, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the closing date.

If the Owner shall be unable on the closing date to give title or to make conveyance or to deliver possession of the Property, all in accordance with the terms of this Covenant, or if on the closing date the Property in any way does not conform with the requirements of this Covenant, then the Covenant Holder may apply as much of the Purchase Price as necessary to curing such failures and nonconformities; but this remedy shall not be deemed to waive, impair or otherwise diminish the priority of the Purchase Rights over other's rights, whether or not appearing of record.

g. No Closing If Defaults Cured

Except as to Purchase Rights arising under Subsection 3.a.(i) (which shall not be revocable except by the Covenant Holder (or its designated purchaser) after Notice of Intent to Sell has been given as required under Section 4 and the Purchase Rights exercised), if at closing the event(s) giving rise to exercise of the Purchase Rights have been remedied and no longer exist, then the Purchase Rights may not be exercised with respect to those events.

h. Purchase Rights Exercisable as to All Ownership Interests

The Purchase Rights shall always be exercisable as to the entire ownership interest in the Property, notwithstanding that the event giving rise to the Purchase Rights might involve less than the entire ownership interest, and shall be exercisable against all the Owners (or any subsequent Owner) notwithstanding that the acts of fewer than all the Owners (or a prior Owner) gave rise to the Purchase Rights.

i. Certificate of Waiver of Purchase Rights

If the Covenant Holder (or its designated purchaser) does not exercise the Purchase Rights, the Owner may request, and the Covenant Holder shall issue a certificate in recordable form stating that the Covenant Holder did not exercise the Purchase Rights as to specified events. Such certificate, if recorded with the Norfolk Registry of Deeds, shall constitute the Covenant Holder's waiver of the Purchase Rights as to the events stated therein.

4. The Owner's Right to Sell the Property

a. Notice of Intent to Sell.

Any time the Owner intends to sell or otherwise voluntarily transfer the Property or any interest in the Property, the Owner shall first give written notice to the Covenant Holder in the manner required in Section 7., which shall state the Owner's intention to sell or otherwise voluntarily transfer the Property or any interest in the Property (the "Notice of Intent to Sell").

b. Second Notice of Intent to Sell

The Owner, having given a Notice of Intent to Sell under Section 4.a. as to which the Purchase Rights were not exercised, shall give written notice to the Covenant Holder in the manner required in Section 7. prior to making a legally binding obligation to sell or otherwise transfer the Property or any interest therein (the "Second Notice of Intent to Sell").

The Owner's Second Notice of Intent to Sell shall specify at least:

- (i) the full consideration for the proposed sale (which in no event shall exceed the Maximum Sales Price), and in the case of other voluntary transfer, a description of the proposed transaction;
- (ii) sufficient evidence to determine whether the person(s) to whom any interest in the Property is proposed to be sold or otherwise transferred is/are members of a Household of Low-Moderate Income as defined in this Covenant;
- (iii) the statement of each person to whom any interest in the Property is proposed to be sold or otherwise transferred that (a) their Household intends to use the Property as its Principal Residence and (b) they have read and understand this Covenant; and
- (iv) expected closing date.

c. Sale Free of Purchase Rights in Limited Circumstances

The Owner may proceed to sell the Property to the proposed purchaser(s) identified in the Second Notice of Intent to Sell or otherwise transfer the Property to the person(s) identified in the Second Notice of Intent to Sell, free of the Purchase Rights only after the Purchase Rights have expired or been waived as stated in this Agreement (except as stated in paragraph d. below) for a price not exceeding the price stated in the Second Notice of Intent to Sell and the Property shall remain as Affordable Housing as stated in this Covenant (notwithstanding that the Covenant Holder did not exercise the Purchase Rights) until the termination of this Covenant.

d. Revival of Purchase Rights

Notwithstanding the foregoing, any sale of the Property, or any other transfer of the Property, occurring more than one year after the Notice of Intent to Sell required under Section 4.a. or being made with persons not identified in the Second Notice of Intent to Sell, shall be subject once again to all the Covenant Holder's Purchase Rights. A new Notice of Intent to Sell (and Second Notice of Intent to Sell, as the case may be) shall be required and the Covenant Holder shall have all the Purchase Rights as to such sale or other transfer as stated above.

e. Certificate of Price and Purchaser's Qualification

The Owner may request and the Covenant Holder after due verification shall issue (when such is the case) a certificate in recordable form stating that the price for the proposed purchase does not exceed the Maximum Sales Price and that the proposed purchaser(s) and their Household are qualified to own the Property under the terms of this Covenant.

f. Good Faith Estimates of Maximum Sales Price

While the Covenant Holder is not required to calculate accurately the Maximum Sales Price except upon sale of the Premises, to assist the Owner in financial planning, on request at any time, even when Owner has not given a Notice of Intent to Sell, the Covenant Holder agrees to make a good faith estimate, based on the information then held by the Covenant Holder, of the Maximum Sales Price.

5. Compliance and Enforcement

a. Certificate of Compliance

No conveyance, sale, transfer or assignment of the Property or any interest therein shall be valid and be deemed in accordance with the terms of this Covenant unless a certificate, signed and acknowledged by the Covenant Holder stating that the proposed conveyance, sale, transfer or assignment of the Property or any interest therein is in compliance with this Covenant, is obtained by the Owner and recorded with the Norfolk Registry of Deeds.

Each sale, conveyance or other transfer of full or partial ownership of the Property shall be subject to all the terms of this Covenant including without limitation the Purchase Rights unless a certificate, signed and acknowledged by the Covenant Holder which acknowledges non-exercise of the Purchase Rights, or waives the same, or acknowledges the purchaser's(s') qualifications, as the case may be, is recorded with the Norfolk Registry of Deeds. The Covenant Holder agrees to issue such a certificate, when required, within a reasonable time of receipt of written request. If the Covenant Holder determines that a proposed conveyance, sale or other transfer does not comply with the requirements of this Covenant, or in the event of other noncompliance rendering issuance of such a certificate inappropriate, the Covenant Holder shall within such time issue a statement in writing (which need not be in recordable form) stating in reasonable detail the reasons for the finding of noncompliance.

b. Reliance on Evidence of Compliance with this Covenant

Any mortgagee or other bona fide purchaser for value of the Property may conclusively rely upon a certificate issued by the Covenant Holder pursuant to this Section as to compliance with or waiver of rights under this Covenant, as the case may be.

c. Compliance Information

The Owner shall furnish such information about the Property as the Covenant Holder may reasonably request from time to time, for example on the identity of each Owner and of each member of the Household living in the Property, the identity of any mortgagee or other person having an interest in the Property, the full consideration paid for the Property, the condition of the Property, and any other information which the Covenant Holder in good faith deems relevant, all for the purpose of assuring compliance with this Covenant.

d. Enforcement

Each Owner hereby grants to the Covenant Holder the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant. Without limiting other remedies of the Covenant Holder, in the event a court of competent jurisdiction finds that any Owner sold, conveyed or otherwise transferred, or leased the Property, or any Owner or any member of the Household living in the Property used the Property in violation of the provisions of this Covenant, or that in any other material way any Owner or any member of such Household was in violation of this Covenant, then after expiration of all applicable appeal rights the Covenant Holder shall be entitled to the following remedies (which shall be cumulative and not mutually exclusive) against each Owner and any other person whose conduct has contributed to the violation, and the right to enforce this Covenant shall survive any transfer of the property:

- (i) specific performance of the provisions of this Covenant;
- (ii) voiding of any rental arrangement that violates this Covenant;
- (iii) (A) in the case of any rental which violated this Covenant, damages equivalent to the rent charged during the existence of the violation, or (B) in the case of a conveyance or other transfer of the Property which violates this Covenant damages for the cost of creating or obtaining other comparable dwelling units to replace the Property in the event it can no longer be Affordable Housing for Low-Moderate Income Households;

- (iv) voiding of any contract for sale, or any sale or other transfer or conveyance, of the Property in violation of any provision of this Covenant including without limitation any sale, transfer or conveyance made in the absence of a certificate from the Covenant Holder approving such sale, transfer or conveyance as provided in Section 5a of this Covenant; or
- (v) damages in the amount of the Affordable Housing Subsidy, together with interest thereon, as set forth in the Mortgage securing this Covenant.

6. Rights of Mortgagees

Notwithstanding any other provision of this Covenant, any financial institution may hold a mortgage or security interest in the Property and such lien holder may acquire title to the Property by foreclosure or instrument in lieu of foreclosure and the Covenant Holder shall release this Covenant by recordable instrument provided

- a. that such financial institution notify the Covenant Holder, as set forth in Section 7, at such time as the Owner is four months in arrears or the financial institution has filed a notice of intent to foreclose against the Property, and such financial institution shall allow the Covenant Holder the opportunity to cure such default within thirty days after receipt of such notice or to exercise its option to repurchase in accordance with the terms and conditions set forth herein; and
- b. that the aggregate principal amount secured by all such mortgages or security interests did not exceed the Maximum Sales Price minus any adjustment for the condominium's capital replacement reserve (that is, calculated solely according to Section 3.d.(i)(A)) at the time of the granting of the mortgages or security interests.

Failure to notify the Covenant Holder of any default for which the lender intends to commence foreclosure proceedings shall not impair the validity of the foreclosure.

In consideration of the release of this Covenant, in the event of such foreclosure or transfer in lieu of foreclosure, if the Property is sold to a third party, all proceeds of the sale shall be applied as follows: first, to any financial institution which satisfies the foregoing provisions, in the order of its record priority, to pay all sums owing to the financial institution; second to the Covenant Holder in accordance with Section 8.b.; and the balance, if any, to the Owner.

Notwithstanding the foregoing, if any person who was an Owner of the Property immediately prior to foreclosure acquires an interest in the Property through or subsequent to foreclosure, or by deed in lieu of foreclosure, then all covenants and the Purchase Rights contained herein shall apply thereafter to the Property with their original full force and effect as if never terminated.

7. Notice

Any demand, notice or request by either party to the other shall be sufficiently given if in writing delivered to the party intended to receive the same, or if mailed by certified mail, return receipt requested, or delivered to a recognized national courier such as Federal Express, in each case addressed to such party at its address set forth above, or in either case to such other address as may be stated in a notice given as herein provided.

8. Term of Covenant

a. Covenants to Run with the Land; Binding Effect

All the agreements, covenants, rights and restrictions set forth in this Covenant shall run with the real property constituting the Property for the purpose of maintaining the Property as Affordable Housing throughout the term of this Covenant, and shall be binding upon each Owner, and all heirs, successors and assigns, for the benefit of and enforceable by the Covenant Holder and its successors and assigns for the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and absent such approval, for a period of thirty (30) years from the date of this Covenant and for such further time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30). The Covenant Holder declares, and the Owner and each other person, including mortgagees, hereafter holding any interest in the Property acknowledges, that the reservation and grant of the agreements, covenants, and restrictions contained in this Covenant are for public and charitable purposes.

Notwithstanding the foregoing paragraph stating the duration of this Covenant and the restrictions on the Property imposed by this Covenant, in the event the condominium of which the Property is a part is lawfully terminated for the purpose of ending all residential use thereof or otherwise terminated with the written consent of the Covenant Holder, then this Covenant shall terminate on the recording of the documents terminating the condominium and payment of all amounts due the Covenant Holder under this Covenant, and thereafter the restriction on land imposed by this Covenant shall cease to be of any further force or effect. Within a reasonable time of receipt of written request, the Covenant Holder will issue a certificate in recordable form stating (if such be the case) that this Covenant has been

terminated, and any such certificate, when recorded with the Norfolk County Registry of Deeds shall be binding and conclusive on the Covenant Holder and all other persons relying thereon.

The Owner shall include a reference to this Covenant in any and all deeds or other instruments conveying any interest in the Property or any part thereof or interest thereon.

b. Payment on Termination

When this Covenant terminates for whatever reason (such as mortgage foreclosure, termination of the condominium or by operation of law) other than expiration of the agreed period of restriction, the Owner shall owe the Town of Brookline ("the Town"), as compensation for the loss of the benefit of this Covenant, the amount equal to the then current value of the Affordable Housing Subsidy, that is, the difference between (i) the fair market value of the Property free of the restrictions imposed by this Covenant, and (ii) the Fair Market Value of the Property subject to the restrictions imposed by this Covenant (assuming the same to be perpetual for such purpose). Fair market value (both subject to and free of the restrictions imposed by this Covenant) shall be determined by the Town through its Assessing Department or other qualified Town staff; provided however, that after notice to the Town, given before or after determination by the Town, the Owner may obtain an Appraisal at the Owner's expense from a qualified appraiser approved by the Town to determine fair market values for these purposes. If the results are within five percent (5%) of each other, the Fair Market Value shall be the average of the two. If the results are more than five percent (5%) apart then, while the parties are at liberty to establish the Fair Market Value by agreement, at the request of either the Owner or the Town a third Appraisal shall be obtained, with the cost shared between the two, and the Fair Market Value shall be the average of those two results which are closest to each other. Payment shall be made out of the proceeds from or on account of the Property (such as sales proceeds, foreclosure proceeds or insurance proceeds) received at the time of, or next following, such termination after discharge of mortgages and other liens senior to this Covenant and shall be paid after payment (net of such mortgage and other lien payments) of this Fair Market Value of the Property as restricted to the Owner and as if perpetual. In no event shall the Owner be personally liable to pay the Town more than the amount, determined as stated above, actually received from or on account of the Property as stated above.

9. Termination or Amendment by Agreement

This Covenant may be amended or terminated by agreement of the Covenant Holder and Owner, subject to any and all approvals required under Chapter 184 Sections 31-33.

10. Appointment of Agent

The Covenant Holder may from time to time appoint and revoke the appointment of one or more persons (who may but need not be municipal employees and who may be natural or legal persons) who shall have the authority to issue certificates as provided herein and to exercise the appointor's other rights under this Covenant to the extent stated in such certificate. Such appointments shall be made (or revoked) only by instrument duly executed by the appointor and recorded in the Norfolk Registry of Deeds, and each such action shall be effective only upon recording. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to this Covenant. As of the date of execution of this Covenant, the Planning Director shall sign such certificates.

11. Releases

No release of the rights of the Covenant Holder contained in this Covenant shall be effective unless it is in writing and duly executed by the Covenant Holder or an authorized agent as stated above and recorded in the Norfolk County Registry of Deeds.

12. Miscellaneous

a. Headings Not Part of Covenant

Section headings have been inserted for convenient reference only and are not to be construed as part of this Covenant.

b. Severability

If any provision of this Covenant or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

c. Interpretation

This Covenant shall be enforceable according to its terms, is subject to the general principles of equity, fairness and reasonableness irrespective of whether such enforcement or interpretation is considered in a proceeding at equity or in law and shall be construed according to its purpose of

fostering and preserving Affordable Housing. "Good faith" shall mean honest due diligence to comply with the requirements of this Covenant using the resources available.

If any term or condition contained in this Covenant should conflict with any of the Property's condominium by-laws, the terms and conditions of this Covenant shall supersede the condominium by-laws to the extent permissible by law.

d. No Recourse to Declarant

The Declarant under the Master Deed is not liable for a breach of this Covenant by a Unit Owner. The Covenant Holder agrees not to seek redress against the Declarant under the Master Deed for any such breach by an Owner.

This Covenant is secured by a Mortgage Securing Obligations Under a Certain Declaration of Restrictive Covenant for the Sale of Affordable Condominium Units, which is recorded herewith.

WITNESS my act and deed this 30th day of August 2001.

Executed as a sealed instrument.

BY: _____
Faye Judith Klayman

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, Ss August 30,
2001

Then personally appeared the above-named Faye Judith Klayman and acknowledged the foregoing instrument to be her free act and deed before me,

Notary Public
My Commission Expires_____

WITNESS our act and deed this day of 2001.

TOWN OF BROOKLINE

BY: _____
Richard J. Kelliher, Town Administrator

BY: _____
Robert J. Duffy, Director
Department of Planning and Community Development

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, Ss , 2001

Then personally appeared the above-named Richard J. Kelliher, Town Administrator and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of said Town of Brookline, before me

Notary Public
My Commission Expires_____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, Ss , 2001

Then personally appeared the above-named Robert J. Duffy, Director and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of said Town of Brookline, before me,

Notary Public
My Commission Expires_____

**MORTGAGE
SECURING OBLIGATIONS UNDER A CERTAIN
DECLARATION OF RESTRICTIVE COVENANT**

FOR THE SALE OF AFFORDABLE CONDOMINIUM UNITS

THE OWNER:

THE OWNER’S ADDRESS: _____ Street – Unit No.

Brookline, MA

THE TOWN: _____ Town of Brookline, Massachusetts

THE TOWN’S ADDRESS: _____ Department of Planning and

Community Development

333 Washington Street

Brookline, MA

THE OBLIGATIONS – All of the Owner's obligations set forth in that certain Declaration of Restrictive Covenant for the Sale of Affordable Condominium Units dated _____, _____ and recorded herewith (the “Covenant”).

THE PROPERTY – Unit No. _____ at _____ Condominium at _____ Street, Brookline, Massachusetts, created by Master Deed and shown on the Site Plan of Condominium dated _____ recorded with the Norfolk County Registry of Deeds in Book _____, Page _____, being a portion of the premises acquired by the Grantor pursuant to deed dated _____ and recorded with Norfolk County Registry of Deeds at Book _____, Page _____, including a _____ percent interest in the common areas and facilities of the Condominium, together with all rights and easements now or hereafter appurtenant thereto and all fixtures now or hereafter on the mortgaged Property insofar as the same are a part of the realty.

Capitalized words or phrases not defined in this Mortgage have the meaning ascribed to them in the Covenant.

In consideration of the benefits of the Covenant, the receipt and sufficiency of which is acknowledged, the Owner hereby grants the mortgaged Property to the Town WITH MORTGAGE COVENANTS to secure the Obligations.

The Owner may, at any time and from time to time, request in writing a subordination of this Mortgage to a new or additional mortgage from a financial institution by written request to the Covenant Holder, currently the Town of Brookline. The Covenant Holder will provide the Owner with a subordination agreement which will be subject to the provisions of the Covenant, but otherwise in the usual or standard form, provided, always, that the aggregate principal amount outstanding or due for all liens and mortgages (after completion of the requested subordination transaction) on the Property that are senior to or in a priority position ahead of this Mortgage does not exceed the Maximum Sales Price defined in Section 3.d. minus any adjustment for the condominium's capital replacement reserve, in accordance with Section 6.b. of the Covenant.

The Owner covenants and agrees that the CONDITION of this Mortgage is that the Owner, and all other persons now or hereafter owning all or any part of the mortgaged Property faithfully performs and observes the Obligations of the Covenant.

For any breach of such condition continuing uncured for such period as is specifically stated in the Covenant with respect thereto (and for ninety (90) days after notice if none is stated), the Town shall have the STATUTORY POWER OF SALE.

In the event a foreclosure of any prior mortgage extinguishes the Covenant, or the Covenant terminates for whatever reason other than expiration of the agreed period of restriction, this mortgage shall also secure repayment to the Town of the Affordable Housing Subsidy equal to the difference between (i) the fair market value of the Property, free of the restrictions imposed by the Covenant, and (ii) the Fair Market Value of the Property subject to the restrictions imposed by the Covenant (assuming the same to be perpetual). The parties agree that as of this date the Affordable Housing Subsidy is \$.00 (/).

In no event shall any Owner of the mortgaged Property, or any other person, be personally responsible to repay all or any portion of the Affordable Housing Subsidy, or any interest thereon, or any cost or expenses under this Mortgage (such as but not limited to costs and expenses of foreclosure), and the Town agrees to look solely to the mortgaged Property for payment thereof, except for recovery of funds wrongfully derived by the Owner from the mortgaged Property in violation of the Covenant.

WITNESS my free act and deed this day of .

Executed as a sealed instrument.

OWNER:

BY: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, Ss ,

Then personally appeared the above-named and acknowledged the foregoing instrument to be free act and deed before me.

Notary Public
My Commission Expires_____